



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

July 16, 2019

OML 2019 – 85

Nancy Glowa, Esq.  
Cambridge City Solicitor  
Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, MA 02139

**RE: Open Meeting Law Complaint**

Dear Attorney Glowa:

This office received a complaint from Marc Levy, on April 10, 2019, alleging that the Cambridge Police Review and Advisory Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on February 27, 2019, and the Board responded by letter dated April 1, 2019.<sup>1</sup> In his complaint, Mr. Levy alleges that the Board violated the Open Meeting Law by holding impermissible discussions with the Cambridge Law Department, failing to list a matter on its meeting notice, failing to inform Mr. Levy that his complaint would be voted on in an executive session, and denying Mr. Levy information about his complaint. Mr. Levy also alleges that the Board violated the Cambridge municipal code.<sup>2</sup>

Following our review, we find that the Board violated the Open Meeting Law by entering executive session without affording certain rights to the subject of a complaint and failing to include sufficient detail about an executive session topic, both in the notice and in the announcement prior to the executive session. In reaching a determination, we reviewed the complaint, the Board's response, the request for further review and January 30, 2019, meeting minutes, both open and executive session. We also listened to audio recordings sent by the Complainant and spoke to Mr. Levy by phone on May 23, 2019. Finally, we corresponded with the Cambridge Law Department by email on June 6 and 13, 2019.

<sup>1</sup> We consider the complaint to have been timely filed as the Complainant could not have reasonably discovered the alleged violations until he received a letter from the Board's Executive Secretary on February 6, 2019, stating that his complaint was being administratively closed. See 940 CMR 29.05(4).

<sup>2</sup> Our Division only has jurisdiction to evaluate Open Meeting Law violations and therefore we decline to review any allegations relating to Board regulations or municipal ordinance.

## FACTS

We find the facts as follows. On or about November 19, 2018, Mr. Levy filed a complaint (the "PRAB complaint") with the Board about actions taken by Cambridge Police Commissioner Bard while acting in his role as a member of the Cambridge Board of License Commissioners. The Board sent Mr. Levy a letter dated December 14, 2018, stating that it had received his PRAB complaint and it would be investigated. The letter stated that Mr. Levy's PRAB complaint had been designated number PR-2018-010. The Board's Executive Secretary Brian Corr, a city employee, reviewed the PRAB complaint and spoke to the Cambridge Law Department (the "Law Department") about whether the Board had jurisdiction over this complaint. The Law Department advised that the Board did not have jurisdiction.

The Board posted an agenda for a January 30, 2019, meeting that included the topic: "Executive Session under M.G.L. Ch. 30A §21(a)(1)[.]" At the January 30, 2019, meeting of the Board, Mr. Levy asked about the status of his PRAB complaint during the public comment period and was not told that the Board planned to discuss his PRAB complaint during that day's executive session. After half an hour of open session, the Board unanimously voted to enter executive session "to review complaints pursuant to M.G.L. Ch. 30A §21(a)(1)."

The executive session lasted approximately two hours and included discussion of several PRAB complaints, including Mr. Levy's. Executive Secretary Corr reported to the Board that, based on his consultation with the Law Department, the Board did not have jurisdiction over the allegations made against the Police Commissioner in his role as a member of the Board of License Commissioners. The Board voted unanimously to confirm that it did not have jurisdiction over Complaint PR 2018-010 and that it should be administratively closed. The Police Commissioner was not present at the executive session, nor was he notified that a PRAB complaint about him was going to be considered by the Board in executive session.

In a February 6, 2019, letter, Executive Secretary Corr notified Mr. Levy that his PRAB complaint had been administratively closed. Mr. Levy sought more information about the process by which his PRAB complaint was closed, including on a February 22, 2019, visit to the Board's offices, but was denied more information by the Board's staff. On February 27, 2019, Mr. Levy filed the present Open Meeting Law complaint (the "OML complaint") with Executive Secretary Corr.<sup>3</sup>

## DISCUSSION

### I. Executive Secretary Corr is not a public body member subject to the Open Meeting Law.

The Open Meeting Law imposes obligations on public bodies, not municipal employees such as town clerks or a public body's staff. See OML 2019 - 68; OML Declination 5-16-19 (Bourne Town Clerk). Here, the Open Meeting Law complaint alleges that Executive Secretary Corr improperly withheld information about Mr. Levy's PRAB complaint, misstated PRAB's

---

<sup>3</sup> Open Meeting Law complaints must first be filed with the public body alleged to have violated the law. G.L. c. 30A, § 23(b). For local public bodies, a copy of the complaint must also be filed with the municipal clerk. 940 CMR 29.05(3). The Board's response states that the complaint was filed instead with Executive Secretary Corr and therefore should be dismissed. However, because the Board received and responded to the complaint, we review the allegations therein. See OML 2017-81 and OML 2017-134.

mission statement in a letter and engaged in "illegal discussion with the Law Department."<sup>4</sup> Many of these allegations constitute matters of Board authority and procedure, and therefore we decline to review them. Additionally, because the Open Meeting Law does not apply to individual employees such as Executive Secretary Corr, the allegations about Mr. Corr's conduct, even if true, would not constitute violations of the Open Meeting Law. Therefore, we decline to review them.

II. The Board violated the Open Meeting Law by entering executive session under Purpose 1 without affording certain rights to the subject of the PRAB complaint, Police Commissioner Bard.

The Open Meeting Law requires that all meetings of a public body be conducted in open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). Public bodies may enter a closed, executive session for any of ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. G.L. c. 30A, § 21(b)(3).

Executive Session Purpose 1 allows a public body to convene in executive session to "discuss the reputation, character, physical condition or mental health, rather than professional competence of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual." G.L. c. 30A, § 21(a)(1). When a public body enters executive session under Purpose 1, the individual to be discussed in the executive session must be afforded certain rights. Id. The individual must be notified in writing by the public body at least 48 hours prior to the proposed executive session. Id. The individual also has the right (1) to request that the session be open; (2) to be present during the meeting; (3) to speak on his or her own behalf; (4) to have counsel or a representative present and attending for the purpose of advising the individual, but not for the purpose of active participation in the session; and (5) to make an independent transcript of the meeting at the individual's expense. Id.

Here, although Mr. Levy's PRAB complaint against Commissioner Bard was a "complaint ... brought against a public officer" and therefore likely a permissible topic for discussion in executive session under Purpose 1, in order to utilize that executive session purpose the Board was required to afford Commissioner Bard his Purpose 1 rights.<sup>5</sup> We understand from the Law Department that Commissioner Bard was not notified, in writing or otherwise, that he was the subject of a PRAB complaint that would be discussed in executive session on January 30, 2019. The rights set forth in General Laws chapter 30A, section 21(a)(1), must be afforded to all subjects of complaints that the Board seeks to discuss during a Purpose 1 executive session. See OML 2019-50; OML 2017-72; OML 2015-54. Therefore, we find that the Board violated the Open Meeting Law to the extent that it did not afford Commissioner Bard and all other subjects of complaints that were discussed in executive session at the January 30, 2019, meeting of the Board, the rights set forth in the Open Meeting Law.

<sup>4</sup> To the extent that the complaint also contains allegations related to Board staff member Crystal Rosa, we find no violation of the Open Meeting Law for the same reason.

<sup>5</sup> We do not make any determination as to the merits of the argument that the Board does not have jurisdiction over the complaint, as that is not within the scope of the Open Meeting Law.

III. The Board violated the Open Meeting Law by failing to include sufficient detail about the executive session topic, both in the notice and in the announcement prior to the executive session.

The complaint and request for further review identify many instances in which information was allegedly withheld from Mr. Levy.<sup>6</sup> Even if true, most of these allegations would not constitute a violation of the Open Meeting Law. The Division of Open Government's statutory authority concerns compliance only with the Open Meeting Law, G.L. c. 30A, §§ 18-25. As such, we decline to review the allegations that are beyond our jurisdiction. See OML Declination 1-25-16 (Nahant Housing Authority Board of Commissioners); OML Declination 5-21-12 (Hampden-Wilbraham Regional School Committee). However, we do find that the Board violated the Open Meeting Law by posting a meeting notice that contained insufficient detail regarding the January 30, 2019, executive session.

Before entering executive session, a public body's chair must state the purpose for the executive session, including all subjects that may be revealed without compromising the purpose for which the executive session was called. G.L. c. 30A, § 21(b)(3); see also District Attorney for N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 ("[a] precise statement of the reason for convening in executive session is necessary under the open meeting law because that is the only notification given to the public that the school Board would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper."). This level of detail about the executive session topic should also be included in the meeting notice. See G.L. c. 30A, § 20(b); OML 2018-69.

A public body may withhold the name of the individual who is the subject of a complaint or grievance hearing held in executive session in order to protect that person's privacy. See OML 2019-37; OML 2015-180. Part of the Board's purpose in reviewing complaints about police officers in executive session under Purpose 1 is to protect their privacy.<sup>7</sup> Since these complaints generally contain allegations of misconduct, we agree with the Board that while such complaints are pending, the need for privacy remains. Because disclosure of this level of information would compromise the purpose for which the executive session was called, it is not required by the Open Meeting Law.

However, we find that including the number that is assigned to each PRAB complaint or the name of the complainant in meeting notices would not compromise the confidential purpose of these executive sessions. Although we generally defer to a public body's assessment of whether the inclusion of details about the topic of an executive session would compromise the

---

<sup>6</sup> We decline to review any allegations made in the request for further review. Our office does not conduct broad audits of public bodies and will seek to address only allegations made in the OML complaint in order to give a public body a chance to address those allegations. See OML Declination 4-22-15; OML Declination 8-25-2015.

<sup>7</sup> The Board argues in its response that it is obligated to protect employees' privacy pursuant to the Massachusetts Right to Privacy Law (M.G.L. c. 214, § 1B) and the Massachusetts Public Records Law. If the Board wishes to enter executive session in order to comply with a general or special law, the Board must assert Purpose 7 of M.G.L. c. 30A, § 21(a) instead of Purpose 1. See OML 2015-170 and OML 2014-42. Regardless, the Board would be required to describe the executive session topics, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called.



purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged. See OML 2017-49; OML 2015-175; OML 2012-118.

Here, the subject's privacy could be maintained even if the complaint number is listed on a meeting notice or discussed in open session because these numbers contain no identifying information. Furthermore, the Cambridge City Code requires the Board Secretary to keep a public docket of complaints. See City Code § 2.74.080. The Board should include on its meeting notices all identifying information that is already public as part of this docket. See OML 2017-49. Including at least the complaint number would allow complainants to keep track of the progress of their own complaints, because the Board sends complainants a letter that contains that number when confirming receipt of a PRAB complaint. Another identifying detail that could be provided without compromising the privacy of the complaints' subjects would be the names of the complainants themselves. See OML 2019-31; OML 2017-53; OML 2016-43; OML 2013-82; OML 2011-54. The Chair of the Board should also use the same level of detail when announcing in open session the purpose for the executive session. For these reasons, we find that the Board violated the Open Meeting Law by failing to include sufficient detail about the executive session topic, both in the notice and in the announcement at the meeting prior to entering the executive session.

### CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by entering executive session under Purpose 1 without affording certain rights to the subjects of the complaints to be discussed and by failing to include sufficient detail about the executive session topic, both in the meeting notice and in the announcement prior to the executive session. We order the Board to provide each of the subjects of the complaints that were discussed during the January 30, 2019, executive session with an unredacted version of the portion of the minutes concerning them. We order the Board's immediate and future compliance with the Open Meeting Law and caution the Board that similar future violations may be considered evidence of an intentional violation of the law.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Sarah Chase

Assistant Attorney General

Division of Open Government

cc: Marc Levy  
Cambridge Police Review and Advisory Board